



MEMORANDUM

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Subject: Community Mental Health Services block grant funding agreements in the Helping Families in Mental Health Crisis Act (H.R. 2646)

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This memorandum was prepared to enable distribution to more than one congressional office.

This memorandum explains how the Helping Families in Mental Health Crisis Act of 2015 (H.R. 2646) would change the Community Mental Health Services block grant (MHBG), authorized under the Public Health Service Act (PHSA), by adding funding agreements requiring states to have in place *treatment standards laws* and *assisted outpatient treatment laws*. (Other proposed changes to the MHBG statute are not addressed.) The background section briefly describes state treatment standards laws and assisted outpatient treatment laws. The current law section explains how the MHBG is subject to funding agreements under current law. The proposed law section explains how H.R. 2646, as introduced on June 4, 2015, would change current law relative to MHBG funding agreements. The final section explains grant eligibility and conditioning federal grant awards. The **Appendix** provides the relevant text from H.R. 2646.

Background

Many states have in place laws establishing standards for involuntary commitment to mental health treatment (i.e., treatment standards laws) and/or allowing assisted outpatient treatment. Typical treatment standards under state law allow or require involuntary commitment when an individual is found to be a danger to self or others. Another common standard is the inability to provide basic needs such as food, clothing, or shelter due to a mental disorder (often called a “gravely disabled” standard).¹

Assisted outpatient treatment is mandatory outpatient mental health treatment (i.e., involuntary commitment to outpatient treatment). State laws allowing court-ordered outpatient treatment are intended to ensure that treatment is provided to individuals with mental illness who are unlikely to participate in treatment voluntarily and who meet other specified criteria—often pertaining to the likely consequences of remaining untreated such as frequent institutionalizations or safety concerns.²

¹ National Conference of State Legislatures, Forum for State Health Policy Leadership, *Frequently Asked Questions: Mental Health*, undated.

² See New York State Office of Mental Health, *Kendra’s Law: Final Report on the Status of Assisted Outpatient Treatment*, March 2005. See also Christina Kent, “To Commit or Not: Virginia Overhauls Its Mental Health System,” *State Health Notes*, (continued...)

Current Law

The Community Mental Health Services Block Grant (MHBG) distributes funds to the states (and U.S. territories) through a statutory formula based on specified economic and demographic factors. MHBG funds are used in accordance with each state's plan for comprehensive community-based mental health services for children with serious emotional disturbance and adults with serious mental illness. The MHBG is authorized under PHSA Sections 1911–1920 (42 U.S.C. §300x et seq.).

For purposes of the MHBG, the term “funding agreement” is defined to mean “that the Secretary may make such a grant only if the State makes the agreement involved.”³ The MHBG is subject to several funding agreements, and one criterion for an MHBG application is that “the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State).”⁴ Examples of MHBG funding agreements include but are not limited to the following:

- “A funding agreement for a grant under section 1911 is that the State involved will establish and maintain a State mental health planning council in accordance with the conditions described in this section.”⁵
- “A funding agreement for a grant under section 1911 is that the State involved will not expend more than 5 percent of the grant for administrative expenses with respect to the grant.”⁶

Under current law, no MHBG funding agreement involves state assisted outpatient treatment laws or state treatment standards laws.

Proposed Law

The Helping Families in Mental Health Crisis Act of 2015 (H.R. 2646) would add three new funding agreements to the PHSA. The relevant text from H.R. 2646 is provided in the **Appendix**.

1. A new PHSA Section 1912(e) would make it a funding agreement that a state have in effect an assisted outpatient treatment law meeting specified criteria.⁷
2. A new PHSA Section 1912(f) would make it a funding agreement that a state have in effect a treatment standards law meeting specified criteria.⁸
3. A new PHSA Section 1915(c) would make it a funding agreement that a state have in effect programs, including assisted outpatient treatment, to engage individuals meeting specified criteria.⁹

(...continued)

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³ PHSA Section 1919.

⁴ PHSA Section 1917.

⁵ PHSA Section 1914(a).

⁶ PHSA Section 1916(b).

⁷ H.R. 2646 Section 206(c)(4)(A) would add to PHSA Sec. 1912 a new subsection (e).

⁸ H.R. 2646 Section 206(c)(4)(A) would add to PHSA Sec. 1912 a new subsection (f).

⁹ H.R. 2646 Section 206(e) would add to PHSA Sec. 1915 a new subsection (c).

Grant Eligibility and Conditioning Federal Grant Awards

The federal agency administering a grant program must ensure that all statutory, regulatory and other eligibility factors are met prior to federal grant funds being awarded. Federal agencies are required to notify the public of these eligibility requirements:

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must submit the following information to GSA:

... (5) General Eligibility Requirements: The statutory, regulatory, or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g. type of non-Federal entity).¹⁰

For competitive grants and cooperative agreements, the awarding agency must also publish notices of funding opportunities in the Federal Register. The notices of funding opportunities must include eligibility information:

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.¹¹

In addition to the requirements to publish eligibility factors, federal agencies must also develop regulations and policies for awarding federal grants. When developing regulations and policies for administering federal grant programs, federal agencies follow guidance issued by the Office of Management and Budget (OMB). Under the OMB grant guidance, grant awards are defined as federal awards:

Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

(a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity as described in §200.101 Applicability.

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, or other agreement for assistance covered in paragraph (b) of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.¹²

The funding agreements proposed in the Helping Families in Mental Health Crisis Act of 2015 (H.R. 2646) would potentially be implemented by incorporating the funding agreements as conditions on the federal award as set forth in the awarding instrument which will likely be a grant agreement.

¹⁰ 2 CFR, §200.202(b)(5).

¹¹ 2 CFR, §200.203(c)(3).

¹² 2 CFR §200.38.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) Does not include an agreement that provides only:

- (1) Direct United States Government cash assistance to an individual;
- (2) A subsidy;
- (3) A loan;
- (4) A loan guarantee; or
- (5) Insurance.¹³

The terms and conditions of grant agreements may include a variety of program specific information and must include several components:

(b) *General terms and conditions* (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) Administrative requirements implemented by the Federal awarding agency as specified in this part.

(ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See §200.300 Statutory and national policy requirements.¹⁴

If enacted, the proposed funding agreements in H.R. 2646 could potentially be interpreted as an eligibility requirement since the bill language states that the failure of a state to comply with the funding agreements would essentially make the state ineligible to receive a federal award. Additionally, the funding agreements would likely also be incorporated as administrative requirements in the terms and conditions of the grant agreement.

¹³ 2 CFR, §200.51.

¹⁴ 2 CFR, §200.210(b).

Appendix. Relevant Text from H.R. 2646

H.R. 2646 Section	Proposed PHSA Section	Language of Proposed PHSA Section (Quoted from H.R. 2646)
206(c)(4)(A)	1912(e)	<p>(e) ASSISTED OUTPATIENT TREATMENT UNDER STATE LAW.—</p> <p>(1) IN GENERAL.—A funding agreement for a grant under section 1911 is that the State involved has in effect a law under which a State court may order a treatment plan for an eligible patient that—</p> <p>(A) requires such patient to obtain outpatient mental health treatment while the patient is living in a community; and</p> <p>(B) is designed to improve access and adherence by such patient to intensive behavioral health services in order to—</p> <p>(i) avert relapse, repeated hospitalizations, arrest, incarceration, suicide, property destruction, and violent behavior; and</p> <p>(ii) provide such patient with the opportunity to live in a less restrictive alternative to incarceration or involuntary hospitalization.</p> <p>(2) CERTIFICATION OF STATE COMPLIANCE.—</p> <p>A funding agreement described in paragraph (1) is effective only if the Assistant Secretary for Mental Health and Substance Use Disorders reviews the State law and certifies that it satisfies the criteria specified in such paragraph.</p>
206(c)(4)(A)	1912(f)	<p>(f) TREATMENT STANDARD UNDER STATE LAW.—</p> <p>(1) IN GENERAL.—A funding agreement for a grant under section 1911 is that—</p> <p>(A) the State involved has in effect a law under which, if a State court finds by clear and convincing evidence that an individual, as a result of mental illness, is a danger to self, is a danger to others, is persistently or acutely disabled, or is gravely disabled and in need of treatment, and is either unwilling or unable to accept voluntary treatment, the court must order the individual to undergo inpatient or outpatient treatment; or</p> <p>(B) the State involved has in effect a law under which a State court must order an individual with a mental illness to undergo inpatient or outpatient treatment, the law was in effect on the date of enactment of the Helping Families in Mental Health Crisis Act of 2015, and the Secretary finds that the law requires a State court to order such treatment across all or a sufficient range of the type of circumstances described in subparagraph (A).</p> <p>(2) DEFINITION.—For purposes of paragraph (1), the term ‘persistently or acutely disabled’ refers to a serious mental illness that meets all the following criteria:</p> <p>(A) If not treated, the illness has a substantial probability of causing the individual to suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality.</p> <p>(B) The illness substantially impairs the individual’s capacity to make an informed decision regarding treatment, and this impairment causes the individual to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages, and alternatives are explained to that individual.</p> <p>(C) The illness has a reasonable prospect of being treatable by outpatient, inpatient, or combined inpatient and outpatient treatment.”.</p>

H.R. 2646 Section	Proposed PHSA Section	Language of Proposed PHSA Section (Quoted from H.R. 2646)
206(e)	1915(c)	<p>(c) ACTIVE OUTREACH AND ENGAGEMENT TO PERSONS WITH SERIOUS MENTAL ILLNESS.—A funding agreement for a grant under section 1911 is that the State involved has in effect active programs, including assisted outpatient treatment, to engage persons with serious mental illness who are substantially unlikely to voluntarily seek treatment, in comprehensive services in order to avert relapse, repeated hospitalizations, arrest, incarceration, and suicide to provide the patient with the opportunity to live in the community through evidence-based (as defined in section 2 of the Helping Families in Mental Health Crisis Act of 2015) assertive outreach and engagement services targeting individuals that are homeless, have co-occurring disorders, or have a history of treatment failure. The Assistant Secretary for Mental Health and Substance Use Disorders shall work with the Director of the National Institute of Mental Health to develop a list of such evidence-based (as defined in section 2 of the Helping Families in Mental Health Crisis Act of 2015) assertive outreach and engagement services, as well as criteria to be used to assess the scope and effectiveness of such approaches. These programs may include assistant outpatient treatment programs under State law where State courts may order a treatment plan for an eligible patient that requires—</p> <p>(1) such patient to obtain outpatient mental health treatment while the patient is living in the community; and</p> <p>(2) a design to improve access and adherence by such patient to intensive mental health services.”.</p>

Source: Excerpts from H.R. 2646 as introduced on June 4, 2015.
